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Brief of Warren

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No. 132.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1898.

THE TOWN OF REAL DE DOLORES DEL ORO, HIPOLITO MONTOYA, ET AL.,
Appellants.

vs.

THE UNITED STATES, ET AL.,
Appellees.

Appeal from the Court of Private Land Claims.

BRIEF OF APPELLANTS.

H. L. WARREN,
Attorney for petitioners.

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STATEMENT OF THE CASE.

This is an appeal by petitioners below from the judgment of the Court of Private Land Claims established by the Act of March 3, 1891, (U. S. Rev. Stats.; Supp. p. 920, Sec. 9) rejecting their petition for confirmation of the town grant from Mexico in question.

The amended petition filed in that Court on April 2, 1897, (Rec. pp. 7-10) in substance alleges that in the year 1830, the town oi Real de Dolores del Oro, in New Mexico, was duly organized under, and in pursuance of the then existing laws of the Republic of Mexico, and continued in existance from the time of its foundation, with the officers, powers, and jurisdiction pertaining to uch town, until the cession of said Territory to the United States; and at that time all of the requirements of the laws of Mexico had been complied with, and said town had become legally entitled to the tract of land containing four square leagues described as having the church situated in said town as the center of said tract; and that it is believed that a grant of said tract had been actually made by the Mexican government, although no original documents are known to exist evidencing the same.

The amended answer of the United States in substance denies the allegations of the amended petition, both of law and fact, and the fifth subdivision or paragraph (pp. 11-12) is as follows:

"Fifth. Defendant further answering, says that, even if said grant as alleged was made as set forth in said petition, the land claimed in said petition under and by virtue of said alleged grant was and is entirely

within the limits of a tract of land known as the Ortiz Mine Grant, which, by virtue of the laws, usages and customs, and mining ordinances of Mexico, was on the 18th day of December, 1833, made to Jose Francisco Ortiz and Ignacio Cano. The claim for which said land so granted, consisting of sixteen square leagues of land, being two leagues in each of the four cardinal directions from the Santa Rosalia mine, was presented by the successors in interest of said grantees to the surveyor general of New Mexico, under the provisions of the eighth section of the Act of Congress of June 27, 1854, for his approval, and that such proceedings were had before said surveyor general, that afterwards, to-wit, November 24, 1860, said surveyor general of New Mexico approved the said claim and transmitted the same to Congress and recommended its confirmation; and that afterwards, to-wit, under and by virtue of the Act of Congress approved March 1st, A. D. 1861, entitled 'An Act to confirm a certain private land claim in the Territory of New Mexico,' said Congress of the United States confirmed said claim as recommended for confirmation; which said act is in words and figures as follows, to-wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the private land claim in the Territory of New Mexico, as recommended for confirmation by the surveyor general of that Territory, and in his report to the commissioner of the general land office, of November twenty-fourth, Eighteen Hundred and Sixty, designated as number forty-three, be, and the same is hereby, confirmed; Pro-

vided, that the foregoing confirmation shall only be construed as quit-claim or relinguishment, on the part of the United States, and shall not effect the adverse rights of any other person or persons whomsoever.

"That under and by virtue of said act of confirmation a survey of said grant so recommended for confirmation and so confirmed was duly made by the public authorities lawfully constituted therefor, and on the 20th day of May, A. D. 1876, letters patent for said confirmed grant duly issued to the New Mexico Mining company as the owners of said Ortiz Mine grant.

"Defendant shows that by virtue of said act of confirmation and said letters patent, the said New Mexico Mining Company acquired the interest of the United States in and to said sixteen square leagues of land, including the grant herein claimed as aforesaid, and that by said Act of Congress the right to said land was vested in said New Mexico Mining Company, and said action of Congress was and is conclusive and binding upon this Court, for the reason that by the act establishing this Court it is specifically provided that no claim shall be allowed for any land the right of which has been hitherto lawfully acted upon and decided by Congress or under its authority.

"Defendant sows that by virtue of said act of confirmation, as aforesaid, passed any title acquired by the United States under the treaty of Guadalupe Hidalgo, and that the United States has no interest in said property, and none which this Court could pass to plaintiff herein, and that said claim is not one

which, under the treaty of Guadalupe Hidalgo, the laws of nations, and the acts of Congress, is entitled to be confirmed by this Court."

The petitioners excepted to the sufficiency of the matter pleaded in said fifth paragraph as a defence to their petition (record, p. 14); and their exceptions were overruled by the Court, and their motion for a re-hearing was denied; (record p. 18) and thereupon the petitioners electing to stand upon their exceptions to said fifth paragraph, the petition was dismissed, and the claim was rejected (record, pp. 16-19); and the petitioners appealed. (Record p. 18.)

SPECIFICATION OF ERRORS.

The Court erred in overruling petitioner's exceptions to the fifth paragraph of the answer; and in holding:—

"First. That plaintiff's petition alleges but an equitable claim—that is, the title pleaded is not shown to have been complete and perfect at the time the government of the Unitd States acquired jurisdicion of this Territory;

"And, second; That the government having divested itself of the title to the property by the Act of confirmation and the patent issued in pursuance thereof, an action cannot be maintained in this Court for the confirmation of plaintiffs' claim." (Record, p. 19.)

ARGUMENT, POINTS AND AUTHORITIES.

1. In addition to the allegations of the amended petition that the town, village, or pueblo called the Real de Dolores del Oro had been duly established in A. D. 1830, and officially recognized under the Republic of Mexico; and that all requirements of law had been complied with; and that said town, "in default of an actual grant of a larger quantity was entitled by law to a tract, including the lands held in severalty, of four square leagues of land in a square form, with the church or the center of the town as the center of the tract" (par. 3, p. 8, record); it is stated that "there is no known direct evidence or record of the grant to said town, although there is reason to believe that a grant was actually made" (Par. 4, p. 8); and that "said land is situated in the county of Santa Fe, New Mexico, and includes four square leagues, having the center of the said town, being the church situated therein, as the center thereof," (Par. 7); and "said tract of land is held and claimed by a large number of persons, including your petitioner, under the said grant." (Par. 8).

It is submitted that under the amended petition the claimants would have been authorized to prove upon trial, title to the tract described, by grant from Mexico which was complete and perfect, or if

not, one which they could "by right and not by grace, have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States;" and which grant it would have been the duty of the court of private land claims to confirm.

Act to establish a court of private land claims; approved March 3, 1891, Supp. Rev. Stat. Sec. 13, p. 922.

Ainsa vs. U. S., 161 U. S. 208-222.

U. S. vs. Santa Fe, 165, U. S. 675-714.

U. S. vs. Sandoval, 167, U. S. 278.

The amended petition was not demurred to; and the Court erred in holding, of its own motion, that only an equitable claim is alleged or could have been proven under the pleadings

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2. The Court below erred in holding that the petitioners could not maintain their action, for the reason stated.

The Act of Congress approved March 1, 1861, confirming the Ortiz mine grant, and the patent issued thereunder to the New Mexico Mining Company, which included the grant claimed by these petitioners, pleaded in Par. 5, of the answer, did not prevent

these claimants from maintaining their action, and from recovery of judgment therein against the United States, upon sufficient proofs.

Express provision is made for such proceeding and money judgment by Sec. 14, of the Act of March 3, 1891, supra; and the court of private land claims is vested with jurisdiction for that purpose.

H. L. WARREN,
Attorney for petitioners.